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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,561	09/15/2003	Michael J. Roche	P17786	9743

45445 7590 01/27/2009  
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EXAMINER
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RUTHKOSKY, MARK

ART UNIT	PAPER NUMBER
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1795

MAIL DATE	DELIVERY MODE
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01/27/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/662,561

**Applicant(s)**

ROCKE ET AL.

**Examiner**

Mark Ruthkosky

**Art Unit**

1795

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10/3/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3,7,8,10-12 and 30-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-3,7,8,10-12 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The reply filed on 10/3/2008 has been entered into the application file.

As noted by Applicants, 35 USC 112, sixth paragraph has been invoked.

A claim limitation will be interpreted to invoke 35 USC § 112, sixth paragraph, if it meets the following 3-prong analysis: (A) the claim limitations must use the phrase "means for" or step for;" (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function. See MPEP § 2181 .1.

Applicants' claims do not meet requirement (C) because the phrase "means for" is modified by sufficient structure, material or acts for achieving the specified function.

In claims 1 and 30, the specific limitation is "in response to the temperature."

Thus, the means-plus-function limitations are not given patentable weight under 35 USC § 112, sixth paragraph.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7-8, 10-12 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fukazu et al. (US 2002/0011327) OR Gottmann al. (US 2003/0157386) in view of Thomas et al. (US 5,752,011.)

The instant claims are to an apparatus comprising a fuel cell; a microprocessor; a cooling system to cool the fuel cell and the microprocessor; the cooling system including a fluid medium to remove heat from the fuel cell and the microprocessor; a temperature sensor to sense a temperature of the fuel cell; and a means for controlling an operating frequency of the microprocessor in response to the temperature.

The claims are to an apparatus, which is a product. Language that suggests or makes optional, but does not limit the claims to a particular structure does not limit the scope of the claims or claim limitation. MPEP 2106c and 2111.04. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. When the prior art structure is capable of performing the intended use, it meets the claim. These limitations are given weight with regard to structure, but not with regard to function.

Fukazu et al. (US 2002/0011327) teaches an apparatus comprising a fuel cell; a microprocessor; and a cooling system to cool the fuel cell and the microprocessor; wherein the cooling system includes a fluid medium to remove heat from the fuel cell and the microprocessor (see paragraphs 0025-29, 33, 57, figures 1-3, and claims 1-6.) The cooling system includes water that goes through a phase change to a vapor at 100 C (p. 54.) Condensers are noted (p. 29.) A power control unit, which is a means for controlling the fuel cell apparatus, is noted (p. 29, 57-60.) The unit processes information and determines allocations of electrical power for the

fuel cell and other electronic devices. With regard to claim 30, the reference does not specifically teach an antenna, however, the circuit is connected to a number of metal members, including cooling fins, which inherently function as an antenna. The microprocessor and control units constitute a means for reducing the clock frequency of the microprocessor, OR a voltage provided to the integrated circuit, in response to the temperature. Although the reference does not disclose the means for this purpose, the claims are to a product. The intended use limitation does not result in a structural difference between the claimed invention and the prior art.

Gottmann al. (US 2003/0157386) teaches an apparatus comprising a fuel cell; a microprocessor; and a cooling system to cool the fuel cell and the microprocessor; wherein the cooling system includes a fluid medium to remove heat from the fuel cell and the microprocessor (see paragraphs (0039-40, 71-76, 78-82, figure 3, and claims 1-61.) The cooling system includes water that goes through a phase change to a vapor at 100 C and lithium bromide (p. 76.) Condensers are noted. A power control unit is noted (p. 29, 57-60.) The unit processes information and determines allocations of electrical power for the fuel cell and other electronic devices. The fuel cell may be used in a computer (77-78.) With regard to claim 30, the reference does not specifically teach an antenna, however, the circuit is connected to a number of metal members, including cooling fins, which will inherently function as an antenna. The microprocessor and control units constitute a means for reducing the clock frequency of the microprocessor, OR a voltage provided to the integrated circuit, in response to the temperature. Although the reference does not disclose the means for this purpose, the claims are to a product. The intended use limitation does not result in a structural difference between the claimed invention and the prior art.

The Fukazu et al. (US 2002/0011327) and Gottmann al. (US 2003/0157386) references do not teach an apparatus, as claimed, that includes a temperature sensor. The references do disclose performing functions in response to measured temperatures. Thomas et al. (US 5,752,011), however, teaches a system that includes a controller that controls a processors clock frequency and activity of the processor in accordance with the processor's temperature (abstract, claims.) The controller is connected to a temperature sensor and a cooling fan (see col. 8, lines 20-end, figures 1-7, 9 and the corresponding text, and claims 1-32.) The system includes a controller that changes that state of operation in response to the temperature sensed. The pump and cooling fan may be adjusted in response to temperature changes (col. 9, lines 20-end.) A load control means and a processor are noted.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include controller system of Thomas et al. in the inventions of Fukazu and Gottmann, in order to maintain thermal control of the fuel cell system and monitor/adjust the system at various states of operation as taught in Thomas. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a temperature sensor as taught by Thomas, in the microprocessor in order to monitor the temperature of the microprocessor and adjust the coolant flow or microprocessor use and maintain safe operating temperatures. The artesian would have found the claimed invention to be obvious in light of the teachings of the references.

### ***Response to Arguments***

Applicant's arguments filed 10/3/2008 have been fully considered but they are not persuasive. Because many of the arguments presented are based on the means plus function limitation added by amendment and the claims are not given weight with respect to 35 USC 112, sixth paragraph, the arguments are moot. As noted in the sections above, a claim limitation will be interpreted to invoke 35 USC § 112, sixth paragraph, only if it meets the following 3-prong analysis: (A) the claim limitations must use the phrase "means for" or "step for;" (B) the "means for" or "step for" must be modified by functional language; and (C) the phrase "means for" or "step for" must not be modified by sufficient structure, material or acts for achieving the specified function. See MPEP § 2181 .1. Applicants' claims do not meet requirement (C) because the phrase "means for" is modified by sufficient structure, material or acts for achieving the specified function. In claims 1 and 30, the specific limitation is "in response to the temperature." By claiming the means for controlling the voltage to function in response to a temperature change, applicants' modify the means by sufficient structure, material or acts for achieving the specified function.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

#### *Examiner Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Ruthkosky whose telephone number is 571-272-1291. The examiner can normally be reached on FLEX schedule (generally, Monday-Thursday from 9:00-6:30.) If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR



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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free.)

/Mark Ruthkosky/

Primary Examiner, Art Unit 1795